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| 10/667,544 | 09/22/2003 | Matthew Bells | 555255012571 | 9931 |

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| EXAMINER |
|---|
| LAM, DUNG LE |

| ART UNIT | PAPER NUMBER |
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| 2617 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

| | Application No. | Applicant(s) |
|---|---|---|
| ***Advisory Action***<br>***Before the Filing of an Appeal Brief*** | 10/667,544 | BELLS ET AL. |
| | Examiner | Art Unit | |
| | Dung Lam | 2617 | |

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED <u>21 June 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection. whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: \_\_\_\_\_.

   Claim(s) objected to: \_\_\_\_\_.

   Claim(s) rejected: <u>29-38</u>.

   Claim(s) withdrawn from consideration: \_\_\_\_\_.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Response to Arguments.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

## *Response to Arguments*

The examiner will enter the minor amendment because it does not require further search.

1.      The examiner acknowledged that there was a *minor typographical error* in

paragraph 1 of previous office action, the heading should have said rejected under

103(a) as being **obvious** rather than **anticipated**.  Despite the minor error, there should

be no confusion and it should have been obvious that the rejection was a 103 rejection

as evidence by the presence of the typical components of a 103 rejection such as two

references, the motivational statements, the heading and the statutory heading

preceding paragraph 103. If the rejection were a 102 anticipatory rejection, there would

have been strictly one reference and no motivational statement.

2.      Applicant argues that the examiner fails to show any kind of state table entry in

Agrawal reference and that it is inherent.  The examiner strongly disagrees.  Paragraph

52 cites, "in an instant messaging application, <u>activity status data concerning the instant</u>

<u>messaging application can be stored at, for example, a presence server</u> or an

application server. Such activity data can be used to determine if the user is available

for instant messaging. For example, <u>a presence server can record</u> that a user has

initiated the instant messaging application but a status record associated with the

instant messaging application can indicate when and how often the instant messaging

application has been used. <u>A status record</u> associated with a user who is nominally

present in the application (based on, for example, a **presence data repository**) can be

queried to determine if the application has been recently accessed." The above

underlined phrases are among the many instances of presence status being recorded in

a necessary state table (presence data repository).

3.      Applicant states that, "the Examiner is claiming that Agrawal anticipates claim 29,

... the Examiner then admits that Agrawal does not teach the presence state data...

Further confusing matters the examiner brings in Dorebosch's reference".

4.      As addressed in the previous action, Agrawal's disclosure is mainly about instant

messaging.  Agrawal's teaches all the limitation except for a minor difference, where he

teaches the concept of not sending data (not presence data) to a user if the user's

status is "unavailable".  He further suggests that this is especially true with time-

sensitive data.  Had Agrawal said "presence data" instead of "data", Agrawal would

have been a perfect 102 reference.  However, because of the slight difference, Agrawal

had to be treated as a 103 with the slight modification or suggestions and motivation.

Hence, Agrawal's was used as a single reference 103 rejection with the slight

modification.

5.      Applicant's representative questions the validity of "presence data" as being

"time-sensitive data".  In response, the examiner notes that one skill in the art knows

that a user's presence status can be "logged on" for 5 minutes and becomes "logged

off" the next minute. Because, presence data is quite volatile and changes quite often

over time, users would only be interested in knowing others present status and not two

days ago because the others' status might have changed a dozen times since the last

two days.  Thus there should be no doubt that user's presence is time-sensitive.

6.      To further emphasize (NOT to confuse matter) the known concept of not sending

data to a user when the user is not around/active, the examiner cites Dorenbosch's

reference. This concept is very similar to what is being claimed except for the fact that the data is not specifically "presence data".

7.      Applicant argues, "because of the Examiner's admission that Agrawal does not specifically teach inhibiting of the transmission of presence data ... the claims should be allowed." In response, the examiner would like to reemphasize that Agrawal does teach the concept of "inhibiting transmission of data (especially time sensitive data) when the user is unavailable." One skill in the art would have use that very same teaching to apply to presence data because presence data is a type of time-sensitive data in order to save system resources. Furthermore, Agrawal also teaches in paragraph 55 that it will be apparent that the examples described can be modified in detail. Again if one skill in the art is taught not to send <u>data</u> to a user who is not available/inactive, then one skill in the art would also logically not send <u>presence data</u> to a user who is not available. After all, presence data is a type of data. In view of the above explanations, the examiner maintains the rejection.

**LESTER G. KINCAID**
**SUPERVISORY PRIMARY EXAMINER**